IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 1122

In the Matter of

CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY,

Debtor.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al.,

Petitioners

vs.

CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY (John B. Gallagher and Edward J. Quinn, Trustees),

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

LEO J. HASSENAUER,
105 W. Adams Street,
Chicago, Illinois
Counsel for Petitioners.

EVERETT L. GORDON,
Of Counsel.

THE TWENTIETH CENTURY PRESS, INC., CHICAGO

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Now come the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen, and pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Seventh Circuit, to review here the record and judgment entered by that Court on March 2, 1945 (R. 269).

Opinion Below.

The opinion of the Circuit Court of Appeals was entered March 2, 1945 (R. 262) and is not yet reported. The United States District Court did not render an opinion.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 347, 43 Stat. 938).

Statutes Involved.

On October 27, 1941, formal proceedings were conducted by the National Mediation Board in accordance with Section 2, Ninth, of the Railway Labor Act, as amended (Act of June 21, 1934, c. 691, 48 Stat. 1185, 45 U. S. C. 151 et seq.), to investigate a representation dispute among motormen, conductors, collectors, brakemen and switchtenders employed by the Chicago, North Shore and Milwaukee Railroad Company. While the National Mediation Board had the matter under advisement preliminary to conducting an election by secret ballot on February 27, 1942, the receivers of the carrier, on February 18, filed Suggestions with the District Court Judge upon which a temporary order was entered directing that "pending adjustment of the jurisdictional labor difficulty" temporary operation of the carrier was to be had "on the basis of change of crews at Howard Street and that the North Shore cars south of Howard Street be operated by Rapid Transit crews * * * ". Certain provisions of the Railway Labor Act, as amended, are involved because a change in an agreement affecting working conditions was ordered in violation of the provisions of Section 6 of the Act, as amended.

Section 6 of the Act, as amended, provides as follows:

"Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

In addition, the General Duties prescribed in the Act, as amended, are similarly involved:

"Sec. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided* (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Fifth. Disputes concerning changes in rates of pay, rules or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto."

The sanctions of the criminal as well as the civil law have been made applicable by Section 2, Tenth of the Act of June 21, 1934, to changes, without thirty days' notice in the rates of pay, rules or working conditions of classes of employees (Section 2, Seventh), to interferences with labor organizations of the employees (Section 2, Fourth), to coercive attempts to induce employees to join or not to

join a labor organization (Section 2, Fourth and Fifth) and to interferences with the designation of representatives (Section 2, Third).

Questions Presented.

1. Whether or not Section 6 of the Railway Labor Act, as amended, is to be construed in its application to the facts in this case, so as to permit a carrier to change an agreement affecting working conditions, without first giving at least thirty days' written notice to the authorized and designated representatives of the employees of an intended change in working conditions, in an effort to arrange for a time and place for the beginning of conference between the representatives of the parties interested in such intended changes.

2. Whether the receivers, trustees, or other individual or body, judicial or otherwise, when in the possession of the business of a carrier, may, while a dispute is in the hands of the National Mediation Board alter or otherwise change working conditions before the controversy has been finally acted upon by the Board.

3. Whether the duty to give at least thirty days' written notice of an intended change in an agreement affecting rates of pay, rules, or working conditions, and fix the time and place for the beginning of conference between representatives of the parties interested in such intended changes, was mandatory on the receivers, trustees, or other individual or body, judicial or otherwise, when in the possession of the business of such carrier.

4. Whether a carrier subject to the Railway Labor Act may enter into an inter-corporate agreement with an intrastate carrier following issuance of a temporary order of court effecting a change in working conditions provided for in a collective bargaining agreement and thus subsequently deprive its employees of contract and other valuable rights

contained in such an agreement which rights have been exercised by the employees uninterruptedly for a period of 23 years.

5. Whether a removal of employees of an interstate carrier in runs operated by them according to seniority and valuable contract rights without interruption for a period of 23 years, and substituting employees of an intrastate carrier on such runs, effected a change in working conditions within the provisions of Section 2, First, Seventh, Section 5, and Section 6 of the Railway Act, as amended.

Specification of Errors.

The Circuit Court of Appeals erred—

1. In holding that the change in working conditions, the removal of the crews of an interstate carrier and substituting therefor employees of an intrastate carrier was not such a change in working conditions as is prohibited in Section 6 of the Railway Labor Act, as amended, but merely constituted a change in the inter-corporate operating arrangement between the two companies.

2. In holding that the Chicago Rapid Transit Co., an intrastate carrier, in leasing trackage rights to the Chicago, North Shore and Milwaukee Railroad Co., an interstate carrier, tracks which were owned by the Chicago, Milwaukee, St. Paul and Pacific R. R. Company, had the right to regulate the operation of the interstate carrier over such leased tracks to the extent of insisting upon the operation of the interstate carrier by employees of the intrastate carrier in violation of the rights guaranteed employees of the interstate carrier by the Railway Labor Act, as amended.

3. In holding in disregard of the provisions of Section 6 of the Railway Labor Act, as amended, a carrier may, while

the National Mediation Board has under advisement a representation dispute, alter or change working conditions before the controversy has been acted upon by the National Mediation Board, as required by Section 5 of the Act.

4. In refusing to follow and apply the decision of this Court in *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, construing Section 6 of the Railway Labor Act, as amended.

5. In refusing to apply the decisions in *In re Central R. Co. of New Jersey, Order of Ry. Cond. of America.* v. *Pitney* (Third Circuit), 145 F. (2d) 351; *Burke* v. *Morphy* (Second Circuit), 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.* (D. C. Ga.), 22 F. Supp. 510, in construing the provisions of Section 6 of the Railway Labor Act, as amended.

6. In holding that the term "working conditions" as used in Section 6 of the Railway Labor Act, does not include any and all circumstances concerning work required of employees covered in a collective bargaining agreement.

7. In holding that there was no interference by respondents or by the District Court with the representation dispute in entering the order requiring a removal of regular employees and substitution of employees of another carrier immediately preceeding an election by secret ballot conducted by the National Mediation Board in accordance with Section 2, Ninth, of the Railway Labor Act.

8. In holding that the controversy which brought about the interruption of movement of interstate trains and the entry of the order in the District Court was a dispute between employees of the intrastate carrier and employees of the interstate carrier.

9. In holding that the Railway Labor Act does not exclude a State from exercising its police power or the right to approve or disprove terms and conditions upon which

one carrier might allow another carrier to use the former's properties or facilities to the deprivation of valuable contract rights provided for in a collective bargaining agreement guaranteed under the Railway Labor Act.

10. In holding that the decision of this Court in *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6, was controlling.

11. In affirming the order of the District Court.

Summary Statement of the Matter Involved.

Petitioners are voluntary unincorporated associations, national in scope, selected by crafts and classes of employees of carriers by railroad in accordance with the provisions of Section 2 of the Railway Labor Act, as amended. Respondent, a corporation, is an interstate carrier operating in interstate commerce between the City of Milwaukee, Wisconsin, and Chicago, Illinois.

Proceedings were instituted before the National Mediation Board October 27, 1941, to investigate a representation dispute among employees on the property of the carrier engaged in train, engine and yard service. The Board rendered its opinion on February 9, 1942, directing that a secret ballot be taken to settle the representation dispute and assigned a Mediator to conduct such election and report the results to the Board (R. 5). The election was conducted on February 27, 1942, under the provisions of Section 2, Ninth, of the Railway Labor Act, as amended (R. 109).

On February 14, 1942, the receivers of the carrier filed certain documents in the District Court entitled "Report on Labor Difficulty Respecting North Shore trains" (R. 79-85) and a supplemental document entitled "Suggestion of A. A. Sprague and Bernard J. Fallon of a Temporary Method of

Running North Shore Trains Into Chicago Pending Adjustment of the Jurisdictional Labor Difficulty" (R. 84).

Following the filing in open Court on Saturday, February 14, 1942, of the "Suggestions" by the receivers, no evidence having been heard, the District Court Judge late in the afternoon of that day, issued an invitation to the representatives of the employees to attend a conference in his chambers on Sunday afternoon, February 15th. The meeting thereupon took on the appearance of a public gathering. The invitation of the District Court Judge negatived any intention to take testimony or hear argument on any application or motion.

On the following Wednesday, February 18, an order was entered, without notice to the representatives of the employees and without hearing any testimony, directing that "pending adjustment of the jurisdictional labor difficulty" *temporary operation* was to be had "on the basis of change of crews at Howard Street and that the North Shore cars South of Howard Street be operated by Rapid Transit crews" * * * (R. 91).

A collective bargaining agreement was promulgated between the former representative of employees engaged in train, engine and yard service with the carrier in 1919, and revised periodically since that date. These agreements contained closed shop provisions which became invalid after the carrier was declared not to come within the exemption *proviso* of the First paragraph of the Railway Labor Act, 122 F. (2d) 128, cert. denied 314 U. S. 669. The agreement in effect at the time of the entry of the temporary order of February 18, became effective June 1, 1941, and was promulgated between Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America and the receivers. The agreement contained the following provision:

"Section 2(c). All working conditions not specifically mentioned in this contract will remain as at present except as changed by mutual agreement" (R. 41).

Respondents did not dispute that, (a) no notice was given to the employees or to their representatives under the Railway Labor Act of an intended change in working conditions under the then existing agreement, and (b) that no notice was given the employees of the order of February 18th (R. 91). The record is devoid of any showing that Section 6 of the Railway Labor Act was complied with and there was no contention in any of the documents filed by the receivers or by the trustees or in the argument before the District Court or the Court of Appeals below that the mandatory duty of giving notice under Section 6 of the Act was complied with.

The National Mediation Board on March 4 and March 9, following the entry of the order of February 18, directing that the crews of the North Shore be removed at Howard Street and replaced by employees of the Rapid Transit Company, certified the petitioners herein as the duly authorized representatives of the employees engaged in train and yard service (R. 109, 138).

The employees involved, since all were affected by the Railway Labor Act, and entitled to the benefits of its provisions, continued to work under protest, under the order of February 18th. After petitioners had been certified by the National Mediation Board, notice was served on the receivers in accordance with the provisions of Section 6 of the Act of an intended change in the collective bargaining agreement obtained by Division 900 of the Amalgamated Association, which expired May 31, 1942. Failing to reach an adjustment through mediation and arbitration under the Act having been declined by the carrier an Emergency Board was appointed (R. 203).

Having exhausted all of the remedies available under the Railway Labor Act in an endeavor to have the receivers petition the Court for a vacation of the temporary order of February 18, petitioners intervened in the bankruptcy proceedings and filed their motion to vacate the order (R. 4). The matter was referred by the District Court Judge to a Special Master in Chancery for hearing. The Special Master filed his report and Findings of Fact and Conclusions of Law on June 5, 1944, wherein he held that no change of any conditions or facts existed warranting the District Court in vacating the order of February 18th (R. 228-237). Objections were filed to the Report and an order entered in the District Court wherein the Report of the Special Master was adopted in all things and that each and every objection thereto filed by petitioners were overruled and the motion of petitioners to vacate the order was denied and the motion dismissed (R. 247).

In affirming the order of the District Court, the Court below erroneously held that in view of the decision of this Court in *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6, that it was not the Intent of Congress in the enactment of the Railway Labor Act to exclude a State from exercising its police power or the right to prove or disprove the terms and conditions upon which one carrier might allow another carrier to use the former's properties or facilities and that as a result of such decision by this Court the Illinois Commerce Commission was not prohibited, following the entry of the temporary order of February 18, from authorizing inter-corporate agreements which deprived the employees of the interstate carrier of rights and benefits conferred on them in the Railway Labor Act, as amended, and valuable contract rights contained in the collective bargaining agreement, which rights and benefits had accrued to and were exercised by the employees for 23 years without interruption.

As a basis for affirming the order of the District Court, the Court below misinterpreted the provisions of Section 6 of the Railway Labor Act and declined to apply the decision of this Court in the case of *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342; *In re Central R. Co. of New Jersey, Order of R. Cond. of America* v. *Pitney* (Third Circuit), 145 F. (2d) 351; *Burke* v. *Morphy*, (Second Circuit), 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.* (D. C. Ga.) 22 F. Supp. 510, and erroneously held, in effect, that Section 6 of the Railway Labor Act applied only in a case involving a reduction in rates of pay.

The record fails to show that at any time was there any attempt made on the part of petitioners to organize employees of the Chicago Rapid Transit Company. There is no basis therefore for the respondents' contention that a jurisdictional labor difficulty existed. No descriptive epithet applied to the dispute on the North Shore line can transform it into something other than it was.

The employees of the Rapid Transit Company now operating North Shore trains from Howard Street, Chicago, to Roosevelt Road and return, a distance of approximately 24.8 miles, were not carried on any seniority roster maintained by the North Shore line, nor did they vote, nor were they eligible to vote in the representation dispute at the election conducted by the National Mediation Board on February 27, 1942.

Respondents in their brief in the Court of Appeals below admit:

> "The Rapid Transit union did not, and did not claim to, represent any North Shore employees here involved. The representation dispute on the North

Shore as to who should represent North Shore employees was between the Brotherhood organizations, on the one hand, and a local North Shore union, known as Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America on the other."

Reasons for Granting the Writ.

This case presents important new questions with respect to the construction of the Railway Labor Act, as amended. The decision of the Court of Appeals below should be reviewed by this Court because:

1. It is a matter of public importance that the Railway Labor Act, as amended, should be properly and reasonably construed so that the collective bargaining agreements promulgated under the provisions of the Railway Labor Act may be maintained, and that no change or alteration of working conditions, may be effected by a carrier, any receiver, trustee, or other individual or body, judicial or otherwise, when in possession of the business of any such carrier while a dispute is in the hands of the National Mediation Board until the controversy has been finally acted upon by the Board, as required by Section 5 of the Act.

2. The decision of the Court of Appeals below is in conflict with the decision of this Court in *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, in construing the Railway Labor Act as merely prohibiting changes in rates of pay and excluding changes in rules or working conditions, and authorizing such changes, without notice to or conference with the designated representatives of the employees.

3. The decision of the Court of Appeals below is in conflict with the decisions of the Circuit Court of Appeals for the Third Circuit, in *In re Central R. Co. of New Jersey, Order of Ry. Cond. of America* v. *Pitney*, 145 F. (2d) 351; for the Second Circuit, in *Burke* v. *Morphy*, 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.*, (D. C. Ga.) 22 F. Supp. 510, in approving methods employed repugnant to the Act in changing or altering working conditions which had been in effect for a period of 23 years.

4. The decision of the Court of Appeals below is contrary to and conflicts with the decision of this Court in *Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515; *Carlisle Lumber Co.* v. *National Labor Relations Board*, 94 F. (2d) 138, certiorari denied 304 U. S. 575; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350.

This Court has dealt with distinct prohibitions against coersive measures and reiterated its views on the necessities of labor organizations and that Unions were essential to give employees opportunity to deal on an equality basis with their employers.

5. The right of the employees engaged in train, engine and yard service of the carrier represented by the petitioners, and the public interest in the efficient operation of railroads are seriously impaired by the decision of the Court of Appeals below.

6. The decision of the Court of Appeals below is further contrary to and conflicts with the decision of this Court in *Brotherhood of Railroad Trainmen et al.* v. *Toledo, Peoria*

& Western Railroad, 321 U. S. 50, wherein this Court held that negotiation, in the sense of bargaining collectively under the Railway Labor Act, is an obligation imposed by law. None of the provisions of the Railway Labor Act applicable to effecting a change in working conditions were complied with by the respondents or its former receivers at the time of securing the order of February 18, 1942.

Obviously, if the view of the Court of Appeals in this case is correct, collective bargaining agreements promulgated between the duly authorized representatives of employees with an interstate carrier, under the provisions of the Railway Labor Act, could be nullified by subsequent proceedings before a State public utility commission.

7. This is the first occasion upon which there has been presented to this Court the question of whether the Railway Labor Act contains an intent to exclude a State from exercising its police power or the right to approve or disapprove the terms and conditions upon which one carrier might allow another carrier to use the former's properties or facilities and strike down the valuable contract and seniority rights contained in the collective bargaining agreement with an interstate carrier which agreement was promulgated under and subject to the provisions of the Railway Labor Act.

The Court of Appeals has decided, and we believe erroneously, questions of great public importance affecting and disturbing relations between carriers and employees subject to the Railway Labor Act and inevitably encouraging disputes between the standard railroad labor organizations and management which should be avoided so far as possible, particularly in the present time of war.

I.

THE RAILWAY LABOR ACT IMPOSES A LEGALLY ENFORCEABLE OBLIGATION ON CARRIERS, RECEIVERS AND TRUSTEES TO "GIVE AT LEAST THIRTY DAYS' WRITTEN NOTICE OF AN INTENDED CHANGE IN AGREEMENTS AFFECTING WORKING CONDITIONS," AND TO ATTEMPT TO AGREE UPON A TIME AND PLACE FOR THE BEGINNING OF CONFERENCE BETWEEN REPRESENTATIVES OF THE PARTIES INTERESTED IN SUCH INTENDED CHANGES BEFORE ALTERING WORKING CONDITIONS.

The main question involved is whether or not Section 6 of the Railway Labor Act is to be construed in its application to the facts in this case, so as to permit a receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any carrier, to alter working conditions of any of its employees while a dispute is pending before the National Mediation Board or before the controversy has been finally acted upon, as required by Section 5 of the Act, by the National Mediation Board.

The primary purpose of the Railway Labor Act is to protect commerce. The Act clearly manifests the intention of Congress to encourage, and in certain instances, to require collective bargaining between carriers and their employes, through designated representatives, as a means of effecting the settlement of disputes between carriers and their employees which might tend to interrupt the flow of commerce or the operation of a carrier engaged in interstate commerce.

Congress encouraged the *making* and *maintaining* of collective bargaining agreements concerning working conditions between carriers and their employees (Section 2, First) through *representatives,* "designated by the respec-

tive parties in such manner as may be provided in their corporate organization, unincorporated association, or by *other* means of *collective action,*" (Section 2, Third), and provided that "all disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, *in conference between representatives,* designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute." (Section 2, Second).

While all disputes between a carrier and its employees were required by Section 2, Second, to be considered, and, if possible, decided, with all expedition, in conference between representatives of the parties interested in the dispute, Section 2, Fourth, Fifth, and Section 6 of the Act outlined the particular mode of procedural processes to be complied with respecting attempted mediation of two specified classes of disputes. Section 2, Fourth, outlined the procedure to be complied with in disputes between a carrier and its employees "arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

Section 2, Fifth, provided:

> "Disputes concerning changes in rates of pay, rules, or working conditions shall be dealt with as provided in Section 6 and in other provisions of this Act relating thereto."

Section 6 provided for notice to and an attempt to arrange a conference between representatives of the parties interested in an intended change, before any change should be made.

In each of these two specified classes of disputes, Congress imposed upon the designated representative or repre-

sentatives of the carriers and of such employees, the duty to give notice and to attempt to agree upon (Section 6) or specify (Section 2, Fourth) a time and place for conference between the representatives of the parties interested in the dispute, so that the dispute should be considered, and, if possible, decided, with all expedition, in conference between such representatives of the parties (Section 2, Second). Congress specifically enacted a statutory prohibition against a carrier altering working conditions, until after the representatives of the carrier and the representatives of the employees had exerted every reasonable effort to consider such disputes in conference. (Section 6).

Congress froze the rates of pay, rules and working conditions which were in effect between carriers and their employees by the provisions of Section 6, and provided further that such frozen "rates of pay, rules or working conditions shall not be altered by the carrier . . . unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation."

Aside from the provisions of Section 6, there was provided certain subsequent procedure, mandatory in character, which indicates the extent to which Congress has gone to safeguard railroad employees against summary and arbitrary alterations of rates of pay, rules or working conditions prescribed in their collective agreements with carriers. As outlined in the foregoing section, following the giving of notice, the Act requires holding of conferences between the parties. Where such conferences are unsuccessful, either party may invoke the services of the National Mediation Board, or the Board may proffer its services. That section places the duty of the Board "as its final required action," if its efforts to bring about a settlement through mediation have been unsuccessful, to

induce the parties to submit to arbitration. In the event that the dispute be not adjusted under the foregoing provisions of the Act, and an Emergency Board is created under Section 10, for thirty days thereafter, no change shall be made by the parties to the controversy in the conditions out of which the dispute arose.

It is undisputed that no notice as provided in Section 6 was given to the authorized representatives of the employees of intention to alter the working conditions provided in the collective bargaining agreement. The record is devoid of showing that Section 6 was complied with, and there was no contention either in the respondents' pleading or argument to the court that the duty of giving notice under Section 6 of the Act was complied with.

It would appear that the language employed in Section 2, Fifth, and Section 6, of the Act, would furnish no means of escape from the conclusion that the duties required by the sections are mandatory and that no change affecting working conditions can be validly accomplished without giving the thirty days' notice and following subsequent procedural processes.

The commands and prohibitions of these sections are clear and positive. The use of the word "shall" indicates that the direction is mandatory. It is the language of command, not advice. (*Escoe* v. *Zerbst,* 295 U. S. 490, 493.) When the purposes of the act are considered, there can be no doubt that the requirements of the Act for the giving of notice, etc., are mandatory upon the carrier employer. (*Virginia Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 542-545.) Were the requirements of the Act advisory, the procedure herein outlined, which is designed to facilitate voluntary adjustment of disputes by requiring the *status quo* to be maintained after the giving of notice and

until at least thirty days after Mediation has failed or the Emergency Board has made its report, would be useless.

The Act, as amended June 21, 1934, strengthened the making and maintaining of agreements and prohibited arbitrarily altering working conditions prescribed in agreements by the addition of Section 2, Tenth, providing that a willful failure or refusal of a carrier, its officers or agents to comply with the terms of Section 2, Seventh, is a misdemeanor and punishable by fine or imprisonment, or both.

The Act, as it stood in 1926 when first enacted, imposed definite and enforcible obligations notwithstanding the absence of statutory penalties. (*Texas & N. O. R. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 567, 568, 569.) Criminal sanctions were plainly not necessary to the enforcement of the provisions of the Act, they were added by the amendment of 1934, (Section 2, Tenth), to prevent a carrier from changing working conditions, prescribed in a collective agreement or in Section 6 of the Act.

A.

The Circuit Court of Appeals erred in holding that displacement of North Shore crews with Employees of the Chicago Rapid Transit Company was not such a change in working conditions as is contemplated in Section 6 of the Railway Labor Act.

In *In re Central R. Co. of New Jersey, Order of Ry. Conductors of America* v. *Pitney*, 145 F. (2d) 351, in bankruptcy court proceedings, that Court held that the thirty day notice required by Section 6 of the Railway Labor Act of an intended change in rates of pay, rules, or working conditions was not given, and no effort was made to proceed in the manner prescribed by the Act. In the same

case the Court held that if road conductors were to be displaced, in contravention of an agreement, the volume of work available for members of that craft would be curtailed by that amount, and in event of a diminution in business those lowest on the roster would that much sooner be assigned to other runs, or be temporarily demoted to service as brakemen, or be without employment. The Court held that displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act, and the remedy provided by the Act was exclusive.

In *Burke* v. *Morphy,* 109 F. (2d) 572, Cert. den. 310 U. S. 635, this Court refused to review a decision of the Court of Appeals which set aside a wage cut order of a District Court Judge ordering a receiver of a carrier to cut wages of the employees because the receiver had no money to pay the wages fixed in the collective bargaining agreement, and holding that such wage cut order was without legal justification because the Railway Labor Act, "forbids any intended change in an agreement affecting rates of pay unless thirty days' notice is given to the other party to the agreement."

An effort on the part of a carrier to change working conditions, without giving the thirty days' notice required by Section 6 was enjoined in *Railway Employees Coop. Assn.* v. *Atlanta B. & C. R. R. Co.* (D. C. Ga. 1938) 22 F. Supp. 510, where the prohibitory and mandatory effect of Section 6 was recognized.

In a case arising under the Newlands Act (Public No. 6, (63d Congress) approved July 15, 1913), a prohibition similar in effect was enforced. Section 9 of that Act provided that whenever receivers appointed by a Federal Court were in possession of a railroad "no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees,

said notice to be given not less than twenty days before the hearing upon the receivers' petition or application * * *." In *Birmingham Tr. & Sav. Co.* v. *Atlanta, B. & A. Ry Co.* (D. C. N. D. of Ga. 1931) 271 Fed. 731, an order of the court authorizing a reduction of wages without the delay of twenty days was held to be without legal effect. The court upheld the validity of the Act in that case.

The receivers of the Chicago, North Shore & Milwaukee Railroad Company were likewise Trustees for the Chicago Rapid Transit Company. This made it convenient for the receivers to make the "Suggestions" to the District Court to prefer Rapid Transit employees to operate North Shore trains and thus attempt to influence and coerce North Shore employees against renouncing representation of Division 900 of the Amalgamated Association. The receivers of the North Shore line were subject, however, to the provisions of the Railway Labor Act, but despite that, they, as trustees of the Rapid Transit line, would relieve themselves of the mandatory provisions of the Railway Labor Act by attempting to assert a dispute between the employees of the Rapid Transit line and the employees of the North Shore line, which never did exist in fact. The receivers thus preferred the employees of the Rapid Transit line as against their own employees shortly before the election was to be conducted by the National Mediation Board. The respondents admit that the Rapid Transit employees who operate the North Shore trains south of Howard Street to Roosevelt Road under the provisions of the order of February 18th "continued to be Rapid Transit employees."

Rather than await the final action of the National Mediation Board in the representation dispute, and to subsequently recognize petitioners as the duly authorized representatives of the employees on the North Shore line an

attempt was made by the receivers to influence and coerce those employees against selecting and retaining membership in the Brotherhoods, and the receivers retaliated against their own employees whose seniority guaranteed them rights to exclusively operate North Shore trains south of Howard Street into Roosevelt Road and return, as they have for the past 23 years. All of the acts of the receivers, the filing of the "Suggestions" to remove their own employees at Howard Street, preferring employees of an intrastate carrier, all on the eve of the election conducted by the National Mediation Board are of the type of interference, influence and coercion condemned by the Supreme Court in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks,* 281 U. S. 548, 568. In that case the Court, in referring to the above terms, said:

> "The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context, *Noscitur a sociis. Virginia* v. *Tennessee,* 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress and undue influence. If Congress intended that the prohibition, as thus construed, should be enforced, the courts would encounter no difficulty in fulfilling its purpose, as the present suit demonstrates."

In addition to the *Clerks'* case, the Supreme Court has upheld the prohibitions against interference, influence and coercion under Section 2, of the Railway Labor Act, which specifically outlaws various methods of engaging in such conduct. *Virginian Ry. Co.* v. *System Federation,* 300 U. S. 515. See also *Brotherhood of Ry. Shop Crafts* v. *Lowden,* 86 F. (2d) 458, Cert. den. 300 U. S. 659. Numerous decisions under the National Labor Relations Act also demonstrate the validity of the prohibition. See especially, *Carlisle Lumber Co.* v. *National Labor Relations Board,* 94 F. (2d) 138, Cert. den. 304 U. S. 575; *National Licorice Co.* v. *National Labor Relations Board,* 104 F. (2d) 655, 309 U. S. 350.

The Court of Appeals below erroneously held that since the Rapid Transit Company leased certain tracks to the North Shore line, it had the right to dictate terms and conditions upon which the North Shore line might operate over such leased tracks. The substitution of employees as provided for in the order of February 18th, is had over tracks which are not entirely owned by the Chicago Rapid Transit Company but which are leased by it from the Chicago, Milwaukee, St. Paul & Pacific Railway Company (R. 55). The petitioners have had collective bargaining agreements with the Chicago, Milwaukee, St. Paul & Pacific Railway Company over a long period of years (See Annual Reports of the National Mediation Board, First to Tenth, inclusive). These agreements were in existence long prior to the enactment of the Railway Labor Act of 1926.

The Court of Appeals below held that the Railway Labor Act did not prohibit the State from exercising its police power for the right to approve or disapprove the terms and conditions of an inter-corporate agreement regardless of whether it affected collective bargaining agreements promulgated under the Railway Labor Act.

The power of a state to interfere with collective bargaining agreements promulgated under a federal act, like the power of a state to fix intrastate railroad rates, must yield to the power of the national government when their regulation is appropriate to the regulation of interstate commerce. *United States* v. *Louisiana,* 290 U. S. 70, 74, 75; *Wisconsin Railroad Com.* v. *Chicago, B. & Q. Ry. Co.,* 257 U. S. 563; *Shreveport Rate Cases,* 234 U. S. 342. Similarly, a contract between a state and a rail carrier fixing intrastate rates is subject to regulation and control by Congress, acting within the commerce clause, *New York* v. *United States,* 257 U. S. 591, as are state agencies created to effect a public purpose. *Sanitary District of Chicago* v. *United States,* 266 U. S. 405. In each case the power of the state is subordinate to the constitutional exercise of the granted federal power.

If a state commission could lend its aid to carriers subject to the Railway Labor Act as a means to avoid the duties imposed by Congress under that Act, railroad labor organizations and the employees represented would find little or no security in collective bargaining agreements. If this Court should approve this back-door method of avoiding agreements, and winking at federal statutes, it will encourage similar action by other carriers and result in a national upheavel of serious consequences.

One would have to disregard the entire history of railroad labor relations to be able to say that the changes obtained by the order of February 18, and its subsequent approval by the Illinois Commerce Commission to give it validity, constituted changes only in inter-corporate operating relationships and were not changes in working conditions as that term is used in the Railway Labor Act.

The receivers agreed with the employees in the agreement Section 2(c) that all working conditions not specifically

mentioned in the contract would remain as at present "except as changed by mutual agreement" (Tr. 41).

This was a right of collective bargaining under the Railway Labor Act and where rights of collective bargaining, created under that Act contained definite prohibitions of conduct or were mandatory in form, this Court enforced the rights judicially. *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515; *Switchmens Union* v. *Mediation Board*, 320 U. S. 297, 300, 301.

The Railway Labor Act, in Section 6, bears on its face the prohibition of changing working conditions while a dispute is pending before the National Mediation Board. That prohibition applied to a receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of a carrier.

CONCLUSION.

The Petition for Certiorari should be granted in order that this Court may review the decision of the United States Circuit Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

.....

Leo J. Hassenauer,

Attorney for Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen.

Everett L. Gordon,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1122

IN THE MATTER OF
CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY,
DEBTOR.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL.,
Petitioners,

vs.

CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY (JOHN B. GALLAGHER AND EDWARD J. QUINN, TRUSTEES).
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

RALPH R. BRADLEY,
FREDERICK E. STOUT,
209 South La Salle Street,
Chicago 4, Illinois,
Attorneys for Respondents.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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Opinions Below.

The United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion on March 2, 1945 (R. 262), which is not yet reported, affirming a decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered June 30, 1944 (R. 247), refusing to vacate a previous order of that Court entered February 18, 1942 (R. 2).

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on March 2, 1945 (R. 262). The petition for writ of certiorari was filed on April 6, 1945. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 347, 43 Stat. 938).

Questions Presented.

Whether the Circuit Court of Appeals was correct in its conclusion that under the circumstances appearing in this case the operation of North Shore trains on Rapid Transit tracks by Rapid Transit crews did not constitute such a change in working conditions as is contemplated in the Railway Labor Act, but instead, constituted a change in the intercorporate operating arrangements between the two companies.

Whether the Circuit Court of Appeals was correct in holding that the phrase "working conditions" used in the Railway Labor Act means such conditions affecting the work of the employees as might be the subject of agreement between North Shore and its employees.

Whether the Circuit Court of Appeals was correct in holding that the Railway Labor Act does not exclude a State from exercising its police power.

Whether there is any intent in the Railway Labor Act to exclude a State from exercising its police power or the right to approve or disapprove the terms and conditions upon which one carrier might allow another carrier to use the former's property and facilities.

Whether the Railway Labor Act was ever intended to constitute a statutory vehicle for settlement of disputes between employees of a local intrastate railway not subject to the Act and employees of an interstate carrier subject

to the Act and whether it provides any adequate machinery for such purpose.

The Statutes Involved.

Both the Illinois Public Utilities Act (Chapter 111⅔ Illinois Revised Statutes, 1941) and the Railway Labor Act (45 U. S. C., Sections 151-163) require consideration in a determination of the issues raised, Respondents claiming that only the former is applicable, and Petitioners claiming that only the latter is applicable.

Pertinent parts of the Illinois Public Utilities Act are as follows:

27. Intercorporate Relations—Proceedings. (Chapter 111⅔ Illinois Revised Statutes, 1941)

"SECTION 27. Unless the consent and approval of the Commission is first obtained:

(a) No two or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other;

• • • • •

(c) No public utility may assign, transfer, lease, mortgage, sell or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business or other property; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public; • • •"

The pertinent part of Section 10, which is the Definition provision of the said Public Utilities Act, is as follows:

"The term 'public utility', when used in this Act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever • • • that now or hereafter:

(a) may own, control, operate or manage, within the

State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with the transportation of persons or property. * * *"

The pertinent parts of the Railway Labor Act to be considered are as follows:

"SEC. 2. * * *

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

* * * * *

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated

representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *provided,* (1) that the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *and provided further,* that nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh: No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

* * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives

by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * * * *

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Apparently through inadvertence, Petitioners, in their quotation of the statutes, refer to "Sec. 2, Sixth," as "Sec. 2, Fourth," and instead of quoting Sec. 2, Seventh, as apparently intended, have quoted from something other than the statute and have erroneously indicated it as Sec. 2, Fifth.

Statement.

As petitioners' summary statement does not begin to set forth all the facts material to a determination of the questions presented, this further statement becomes necessary. The importance of the factual situation would appear to justify a complete statement thereof.

The Chicago North Shore and Milwaukee Railroad Company (for convenience referred to as "North Shore") is an electrically operated rail carrier serving Chicago, Illinois and Milwaukee, Wisconsin and intermediate points. Prior to March 31, 1919 it had no entrance into Chicago and operated only as far south as Church Street, Evanston. As of March 31, 1919, it obtained certain contractual rights to operate into the City of Chicago over the tracks controlled and operated by the then predecessor of the Chicago Rapid Transit Company (for convenience referred to as "Rapid Transit"), a local intrastate railway which furnishes elevated railway service in the City of Chicago and certain suburbs. (R. 55.)

Under said contract of March 31, 1919 the Rapid Transit, or its predecessor, reserved and retained to itself the right to adopt and impose rules, orders and regulations for all cars and trains upon the property jointly used and to govern performance of the duties of all employees employed in any work upon or in connection with the joint use of Rapid Transit property. (R. 69 and Trustees Ex. 13, R. 224-225.)

Said contracts covering such operation by North Shore trains over Rapid Transit tracks were approved by the Public Utilities Commission of Illinois, predecessor of the present Illinois Commerce Commission. (R. 200—Trustees Ex. 9.) Under the original contract, operations only

extended to Roosevelt Road, Chicago, but later the Illinois Commerce Commission authorized operations as far south as 63rd and Stony Island Avenue, Chicago, and, several years later still, authorized abandonment of North Shore service south of said Roosevelt Road. (R. 100.) Those operating contracts between the North Shore and the Rapid Transit expired on January 8, 1944 and are being carried forward on a day to day basis pending negotiation of a new agreement.

At or about the time said agreements were made the operating employees of the Rapid Transit, or its then predecessor, were and ever since have been, represented by a union known as Division 308 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America. (R. 69.) For the Court's information, the Rapid Transit is not an interstate carrier and its employee relationship is not subject to the Railway Labor Act. No contention or suggestion, as far as is known, has ever been made that they are or might be.

Shortly after March 31, 1919 Division 900 of said Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America became the bargaining agent for all organized employees of North Shore, except for a small group of electrical workers, (R. 69) and continued to represent them until Petitioners, the Brotherhood organizations, were certified in March of 1942 under the procedures prescribed by the Railway Labor Act. Said Brotherhood organizations came on the North Shore properties in 1937 or 1938 for the purposes of organizing North Shore train service employees. (R. 69.)

There was considerable litigation, both before the Interstate Commerce Commission and before the courts, concerning the question as to whether the North Shore was a carrier subject to the Railway Labor Act, and such litigation was not concluded until the latter part of 1941.

Following the conclusion of the aforementioned litigation determining that the North Shore was subject to the Railway Labor Act, the National Mediation Board, beginning October 27, 1941, conducted formal proceedings to determine the craft or classes of employees on the North Shore for representation purposes in connection with a representation dispute involving the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, who claimed to represent motormen, conductors, collectors, brakemen, switchmen and switch tenders, and Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which, as above stated, had represented nearly all classes of North Shore employees over a long period of time, including those contended for by the said Brotherhood organizations. (R. 61, 63.) At that meeting, one of the members of the National Mediation Board made the announcement that a notice of the hearing had been sent to the carrier, not, however, with the intention of making the carrier a party to the proceedings, but with the end in view of having the carrier's representative present at the invitation of the Board, to present such evidence and testimony as may be helpful in enabling the Board to solve the issues in question. (R. 62-63.)

On January 9, 1942, the Executive Committee of said Division 308 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, representing employees of the Rapid Transit, met with the Trustees of that company and informed said Trustees that at some time in the future the members of said Division 308 would notify said Trustees that Rapid Transit employees would no longer associate themselves or participate in the operation of the North Shore. (R. 64.) On the morning of the following day said Trustees of the

Rapid Transit, who were also Receivers for the North Shore, together with counsel for both railroads, called upon Judge Michael L. Igoe, who had charge of the properties of both railroads, and reported to him in chambers said remarks by said Rapid Transit union representatives, and it was decided that counsel for the Receivers should undertake a trip to Washington to apprise various government officials of the possibility of future interruption of transportation service. (R. 64-66.) Such a trip was made by counsel for the Receiver on January 12, 1942, and he met with representatives of the Office of Defense Transportation and the Director of Conciliation Division of the Department of Labor, and informed them of the situation. (R. 67.)

On Saturday night, January 31, 1942, about 9:00 o'clock, said Division 308, representing employees of said Rapid Transit, delivered to the Trustees of the Rapid Transit a communication addressed to such Trustees, advising that from and after 5:00 A. M., February 1, 1942, the members of said union would not associate themselves nor participate in the operation of North Shore trains. (R. 67, 71.)

The next morning, February 1, 1942, when the first North Shore train was ready to leave the lay-up track near Roosevelt Road, the Rapid Transit towerman refused to throw the switches and give the signal to permit said train to proceed. With consent of said Division 308, switches were thrown, however, to permit four North Shore special trains for Great Lakes Naval Training Station to operate, but were not thrown for the next regular North Shore train. The towerman was immediately discharged. Similar incidents occurred at the north end with respect to trains Chicago-bound. (R. 73-74.) In order to avoid a tie-up of Rapid Transit operations which would also prevent the operation of North Shore military trains, it was

necessary for the Trustees of Rapid Transit Company to re-employ the Rapid Transit towerman. No North Shore regular trains operated into or out of Chicago from February 1, 1942 until February 18, 1942, although military trains were permitted to operate. (R. 73-75.)

Immediately following the receipt of said notice on January 31, 1942, telegraphic communications advising of the situation were sent to the Chairman of the National War Labor Board, to the Director of Defense Transportation, to the Conciliation Division of the United States Department of Labor, at Washington, and to the Director of the Department of Labor of the State of Illinois, at Chicago, but no action was taken by any of them with respect to the interruption of North Shore service. (R. 72-77.)

Revenues on the North Shore declined sharply due to the inconvenience caused to riders from having to transfer on foot from North Shore shoreline trains at Linden Avenue, Wilmette, to Rapid Transit trains, and from North Shore Skokie Valley trains, at Howard Street, Chicago, to Rapid Transit trains. (R. 88 and Trustee's Ex. 14 at R. 226.)

On February 6, 1942, upon notice given to the respective parties of record, including notice to the aforementioned Brotherhood organizations in the North Shore case, the Receivers of the North Shore and the Trustees of the Rapid Transit filed in their respective proceedings, in open court, a report on labor difficulties respecting North Shore trains. (R. 68-77.) The Brotherhoods filed a reply to that report. (R. 78-79.)

On or about February 9, 1942, the National Mediation Board handed down its decision determining the class or craft for representation purposes in the North Shore representation dispute before that Board and directed the taking of a secret ballot. (R. 108-109; also Trustees' Ex. 12,

R. 211.) Neither the Rapid Transit nor its employees were involved in that proceeding which related solely to a choice by North Shore employees of their bargaining representatives.

On February 14, 1942, after notice to the parties of record, including the said brotherhood organizations in the North Shore case, an additional report was filed by said Receivers and said Trustees in their respective proceedings, together with suggestions that, as a temporary method of running North Shore trains into Chicago pending adjustment of the aforementioned jurisdictional labor difficulty (which involved refusal of Rapid Transit employees to associate with North Shore operations), North Shore trains be operated into the City of Chicago by the Rapid Transit with the latter's crews. These suggestions were made in open court at which counsel for said brotherhood organizations were present. (R. 79-85.)

No formal action was taken by the court at that time but on the next day a meeting in chambers of all the interested parties was called by the court. At said meeting both Brotherhood organizations were represented, as well as a third Brotherhood organization which is not involved in this appeal, and also representatives of said Amalgamated Association, including representatives from the Rapid Transit local union, the North Shore local union, and the Chicago Surface lines local union. Also representatives of both carriers, were present. Considerable discussion of the controversy took place and ample opportunity was given to both sides to state their position in the matter, and both sides did state their position in the matter. The suggestions of change of crew were discussed, including a further suggestion that Howard Street, rather than any other point, would be the best place to make the change. The court inquired as to how long it would take to put such an arrangement into effect. Upon being in-

formed that the necessary training of Rapid Transit employees could probably be accomplished in time to start operation on the following Wednesday morning (February 18), the court gave verbal instructions that such operations should be put into effect on said Wednesday morning. (R. 86-89.)

At the opening of court on Wednesday, February 18, 1942, which was the Wednesday following said meeting, formal orders were entered by the court, one in the North Shore receivership proceedings and one in the Rapid Transit bankruptcy reorganization proceedings, directing operation of North Shore cars (except certain military trains) into Chicago with Rapid Transit crews in accordance with the aforementioned suggestions. (R. 2-3; also Trustee's Ex. at R. 196-197.) Operation of North Shore trains (except certain military trains) was resumed into Chicago on that date with Rapid Transit crews.

On February 20, 1942 a proposed amendatory contract to amend the original operating contracts covering operation of North Shore trains by Rapid Transit crews on Rapid Transit tracks was presented by the Receivers of the North Shore and by the Trustees of the Rapid Transit in their respective court proceedings after notice to the interested parties, including Brotherhood organizations in North Shore case. The court approved execution of said amendatory contract and, subsequently, the Illinois Commerce Commission also approved same. The Commission order contained a finding "that the said supplementary operating agreement is fair and equitable to the parties and is in the interests of public convenience and necessity, and should reasonably be consented to and approved." (Trustees' Ex. 8 at R. 197-198 and Trustees' Ex. 9 at R. 198-202).

Following the election conducted by the National Mediation Board in the North Shore representation dispute,

which election was held during the latter part of February 1942, said Board certified under date of March 4, 1942 the Brotherhood of Locomotive Firemen and Enginemen to represent North Shore motormen, and on March 9, 1942, certified the Brotherhood of Railroad Trainmen to represent trainmen, brakemen and collectors. On March 18, 1942 it certified the Brotherhood of Railroad Trainmen to represent switchmen and switchtenders. (R. 109, 138.)

Shortly after such designation, Petitioners, said Brotherhood organizations, informed the Receivers of the North Shore that until further notice they would continue to work under the collective bargaining agreement obtained by Division 900 of the Amalgamated Association, which agreement was effective June 1, 1941 to May 31, 1942. (R. 40-41.) Subsequent thereto said Brotherhood organizations served written notice under the provisions of Section 6 of the Railway Labor Act of an intended change in said agreement. (R. 96.) The carrier and said Brotherhood organizations were unable to agree on a new contract and, failing to reach an adjustment through mediation, an Emergency Board was appointed by the President of the United States. (R. 96-97.) In the submission of their case to said Emergency Board, the Brotherhood organizations sought to have said Board, in addition to passing on the question of wages, rules and working conditions, annul the effect of the aforementioned court order of February 18, 1942 which provided for the operation of North Shore trains over Rapid Transit tracks by Rapid Transit crews. Said Emergency Board, in its report to the President of the United States, dated June 8, 1943, found that it was without right under the Railway Labor Act to decide the issue. (Trustees' Ex. 12 at R. 205-222.)

Later in 1943 the Brotherhood organizations sought and obtained leave to intervene in the North Shore bankruptcy

reorganization proceedings, which had superseded the prior equity receivership proceedings, for the purpose of filing a motion to have the said court set aside the aforementioned order of February 18, 1942. (R. 24.)

The issues were referred to a master. He heard the evidence and filed his report in which he found the facts from which he concluded that the order providing for the operation of North Shore thereunder was of interest to the public and the National War effort; that at the entry of the order no dispute existed between North Shore and its employees; that no change of conditions or facts existed warranting the court in vacating the order; that the order did not violate any of the provisions, or change rates of pay, rules, or working conditions contrary to the Railway Labor Act; that the change of crews effected by the order involved inter-corporate operational rights of a junior carrier using the facilities of a senior carrier; and that neither a written agreement between North Shore and its employees nor long continued practices as to the manning of North Shore trains by North Shore employees between Howard Street and Roosevelt Road could deprive Rapid Transit of the right to make, alter, or refuse agreements to other carriers using or desiring to use its tracks or from exercising the supervision and control it had reserved to itself as the senior road. (R. 228-237.)

The District Court adopted the master's findings, overruled exceptions and objections to the report, and entered an order denying and dismissing the motion to vacate the order of February 18, 1942.

Petitioners did not take any steps to appeal from the order of February 18, 1942 at any time prior to the appeal from the order of June 30, 1944 denying their motion to vacate and set aside said order of February 18, 1942; nor did they ask to have vacated or set aside the order entered

in said North Shore receivership proceedings on February 20, 1942 which authorized the North Shore Receivers to execute an agreement with the Rapid Transit Trustees amending, with approval of the Illinois Commerce Commission, the operating agreements between the Rapid Transit and the North Shore.

Summary of Argument.

1. The right of the North Shore to use as an entrance into Chicago the tracks controlled and operated by the Rapid Transit and the method and manner of such use is the subject of inter-corporate agreement between said two companies requiring approval of the State regulatory body known as the Illinois Commerce Commission.

2. The Railway Labor Act has not deprived said Commission of its jurisdiction in the premises as said Act does not even undertake governmental regulation of wages, hours or working conditions, let alone the regulation of inter-corporate operating agreements and relationships between carriers; nor has Congress indicated any intention in the Railway Labor Act to exclude the States from exercising their police powers.

3. As pointed out by the Circuit Court of Appeals, there was here no interference by the Receivers of the North Shore or by the District Court with the representation dispute on the North Shore concerning the question as to who should represent North Shore employees; but the controversy which brought about the interruption of movement of North Shore trains over Rapid Transit tracks and the entry of the order leading to the changes in the inter-corporate agreements was a controversy between Rapid Transit employees, who were members of Division 308 of the Amalgamated Association, and North Shore employees, who were members of Petitioners' organizations. The last

mentioned controversy is not to be confused with the previously mentioned representation dispute.

4. The Railway Labor Act does not constitute a statutory vehicle for settlement of disputes between employees of a local intrastate railway not subject to the Act and employees of an interstate carrier subject to the Act, and does not provide any adequate machinery for such purpose. It does not even purport to cover controversies between employees of two or more carriers. On the contrary, its provisions are aimed at and limited to the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representatives of their employees and, as an incident thereto, in providing the means for determining who are to act as such authorized representatives.

5. "Working conditions" as used in the Railway Labor Act means such conditions affecting the work of the employees of a carrier subject to the Act as might be the subject of agreement between such carrier and its employees. The alleged changes in working conditions here in question were not of such nature that an agreement between the North Shore and its employees concerning them would be binding against the Rapid Transit which had reserved the right to adopt and impose rules, orders, and regulations for the operation of all trains over the tracks and to govern the performance of the duties of all employees employed in connection with the property jointly used; nor were they of such nature as could deprive the Illinois Commerce Commission of its jurisdiction over the inter-corporate relationship between the two carriers.

6. The action of the District Court and the Illinois Commerce Commission in approving the inter-corporate contract changes whereby Rapid Transit crews manned North Shore trains while on Rapid Transit tracks brought to an end the interruption in commerce caused by the controversy

between the Rapid Transit employees and the North Shore employees and was found by the Illinois Commerce Commission to be in the interest of public convenience and necessity and the only apparent solution. Neither was seniority or wage rates of North Shore employees changed by the solution arrived at.

7. No conflict exists between the decision of the Circuit Court of Appeals affirming the District Court in the instant case and decisions of this Court or other decisions of the various Circuit Courts of Appeal in interpreting the provisions of the Railway Labor Act, since none of those decisions involved, as here, a situation where the controversy was between employees of a local intrastate elevated railway carrier not subject to the Act and employees of a carrier subject to the Act operating over tracks of the former and which controversy had already brought about an interruption in commerce. In all of the Railway Labor Act cases cited by Petitioners in support of their contentions, the matters in dispute rested wholly within the volition of a carrier subject to the Act and its own employees, with the exception of *Missouri Pacific R. R. Co.* v. *Norwood*, 42 Fed. 2d 765 and in that case it was held that "working conditions" as used in the Act could not include matters of a statutory duty as such are withdrawn from the volition of either party. The instant case follows rather than conflicts with that case.

8. From a practical standpoint, the instant case is moot because the North Shore has lost its right to operate over Rapid Transit tracks by expiration of its operating contracts and is presently operating by sufferance pending negotiation, and approval by the Illinois Commerce Commission, of a new contract. It is inconceivable that the Rapid Transit will permit the North Shore to operate over Rapid Transit tracks in any manner likely to disrupt the latter's own service.

ARGUMENT.

I.

The Railway Labor Act Is Not Intended To and Does Not Provide a Means for the Regulation and Control of Inter-Corporate Relations Involving the Use of Property and Facilities of One Carrier by Another; Nor Does It Constitute a Statutory Vehicle for Settlement of Disputes Between Employees of a Local Intrastate Railway Not Subject to the Act and Employees of an Interstate Carrier Subject to the Act and Does Not Provide Any Adequate Machinery for Such Purpose.

The North Shore is an interstate rail carrier which has been declared to be subject to the Railway Labor Act. It enters the City of Chicago over tracks controlled and operated by the Chicago Rapid Transit Company which is a local intrastate carrier furnishing elevated railway service to Chicago and certain suburbs. (R. 55; Trustee's Ex. 9—R. 200.) But the Rapid Transit is not subject to the Railway Labor Act. It has never been declared to be subject to said Act, and, so far as is known, no one has ever contended that it might become subject to said Act.

The North Shore first entered the City of Chicago over the tracks controlled and operated by the Rapid Transit under an operating agreement, dated March 31, 1919, between predecessors of the two existing companies; and this operating agreement was approved by the then Illinois Public Utilities Commission (now Illinois Commerce Commission). (R. 55 and Trustee's Ex. 9 (R. 200).) Under the Illinois Public Utilities Act inter-corporate contracts providing for use by one rail carrier of tracks and facilities of another carrier require the approval of the

regulatory body, now Illinois Commerce Commission, created by said Act. (See 27, Chapter 111⅔, Ill. Rev. Stat. 1941.) The purpose of the Public Utilities Act was to bring under the control of the public, for the common good, property applied to public use in which the public has an interest and that Act contemplates actual supervision of every public utility so that continuous, adequate, uniform and satisfactory service shall be rendered to the public at reasonable rates and without discrimination. *City of Chicago* v. *Alton Railroad Company*, 355 Ill. 65, at page 74.

Following the 1919 contract, additional contracts and amendments were made between the North Shore and the Rapid Transit, or their predecessors, with the approval of the Illinois Commerce Commission, under which North Shore operations over Rapid Transit tracks were extended, at one time as far south as 63rd Street and Stony Island Avenue. In 1938 operations south of Roosevelt Road were abandoned with the approval of said Commission. (R. 100.)

The validity of North Shore operation over Rapid Transit tracks and the powers of said Commission in connection with such operation were the subject of litigation which went to and was passed upon by the Supreme Court of Illinois in the case of *Chicago North Shore and Milwaukee Railroad Company* v. *City of Chicago*, 331 Ill. 360. The Illinois Supreme Court in that case upheld the jurisdiction of the Commerce Commission and the validity of North Shore operation over Rapid Transit tracks. Section 27 of the Public Utilities Act specifically provides and makes mandatory the approval by the Commission of inter-corporate operating contracts. In the *North Shore* case, 331 Ill. 360 at 378, the Court pointed out that in previous decisions the Supreme Court of Illinois has held that the regulation of public utilities is within the exercise of the police power of the state. The Circuit Court of

Appeals has previously recognized the jurisdiction of the Illinois Commerce Commission in such situations and the necessity of obtaining its approval to inter-corporate operating contracts. *Borg* v. *Illinois Terminal Co.*, 16 Fed. (2d) 988, 990.

The predecessor to the Rapid Transit, in said operating agreement of March 31, 1919, reserved the right to adopt and impose rules, orders and regulations for the operation of all cars and trains over said tracks and to govern the performance of the duties of all employees employed in any work upon or in connection with the property jointly used. The contract also provided that the operation of all cars and trains over the tracks jointly used should be subject to and should comply with the dispatching, supervision, orders, rules and regulations of said predecessor to the Rapid Transit. (Trustees' Exhibit 13, R. 224-225.)

Rapid Transit employees, late in the day on January 31, 1942, notified their employer, the Trustees of the Rapid Transit, that from and after a stated hour on February 1, 1942 the Rapid Transit employees would no longer associate themselves with North Shore operation. (R. 71.) Said notice reading as follows:

"Division—308

Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America.

Col. A. A. Sprague and
Mr. Bernard J. Fallon,
Co-Trustees,
Chicago Rapid Transit Company,
72 West Adams Street,
Chicago.

Dear Sirs:

We wish to notify you hereby that, in accordance with action taken by our membership, from and after

5 A. M., February 1st, 1942, our members will not associate themselves nor participate in the operation of Chicago North Shore and Milwaukee trains.

We very much regret having to take this action, but the raids of the Brotherhood of Railroad Trainmen and other outside groups upon our organization—which has been established in this area for forty years—is a threat which we cannot ignore. The preservation of our organization leaves us no choice in the matter.

Executive Board:

ALEX A. MUSCATO,
CHARLES J. BURNS,
MARGARET E. NEARY,
R. LAVIGNE,
WM. J. LARABELL,
W. F. LEVANDER,
President.

JOHN J. GRACE,
Vice President.

THOMAS J. MULLEN,
Secretary-Treasurer."

The following morning said Rapid Transit employees refused to throw switches which would permit regular North Shore operation on Rapid Transit tracks, although they did make a concession as to certain military trains of the North Shore. (R. 73-74.)

Such action was apparently prompted by the bitterness of a controversy which had arisen between the local union known as Division 308 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which represented Rapid Transit employees, and Petitioners, the Brotherhood organizations. The Rapid Transit union did not, and did not claim to, represent any North Shore employees here involved. The representation dispute on the North Shore as to who should represent North Shore employees was between the Brotherhood or-

ganizations, on the one hand, and a local North Shore union, known as Division 900, of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, on the other hand. That representation dispute on the North Shore was before the National Mediation Board under the procedures set up by the Railway Labor Act (R. 35, 60-62); and is not to be confused with the controversy which had arisen between Rapid Transit employees who were members of said Division 308 and North Shore employees who were members of said Brotherhood organizations.

As far as the representation dispute on the North Shore between the aforesaid Division 900 and said Brotherhood organizations was concerned, it took a normal and regular course according to the procedures of the Railway Labor Act, an election being held under the supervision of the National Mediation Board and ultimate certification being given to the Brotherhoods. (R. 35-36, 39, 60-62, 70, 109, 138.) There never has been and is not now any contention but that the Brotherhoods from the date of their certification became and are now the designated bargaining representative for North Shore employees; but that has nothing whatever to do with the aforesaid controversy between Rapid Transit employees, members of Division 308, and said Brotherhood organization.

From February 1, 1942, when the Rapid Transit employees refused to permit operation of North Shore trains, except certain military trains, on Rapid Transit tracks, up until the morning of February 18, 1942, no regular North Shore trains entered or left the City of Chicago over Rapid Transit tracks. (R. 74, 117-119.)

The North Shore Receivers as such had no control over Rapid Transit employees. (R. 69.) However, the same individuals as Rapid Transit Trustees, could discharge Rapid

Transit employees, and did do so in the first instance when Rapid Transit employees refused to perform the work necessary to permit movement of North Shore cars on Rapid Transit tracks. (R. 73-74.) But shortly thereafter said Rapid Transit Trustees took back said discharged employees in order to prevent a complete tie-up of Rapid Transit operations and which tie-up would also have resulted in the non-operating of North Shore military trains. (R. 74, 75, 102-103.)

The War Labor Board, the Conciliation Division of the United States Department of Labor, and the Office of Defense Transportation were promptly informed as to the cessation of North Shore operation into Chicago resulting from such refusal of Rapid Transit employees to perform work necessary to such action. However, none of those agencies took any affirmative steps to bring about a resumption of North Shore operation over Rapid Transit tracks. (R. 72-77.)

When no other solution appeared possible, the Receivers and Trustees of the North Shore and the Rapid Transit, respectively, decided to suggest to the District Court, in their respective court proceedings, that the Rapid Transit, which, as aforesaid, had not only reserved but held complete control over North Shore operations while on Rapid Transit tracks, should through its own Employees move the North Shore cars over Rapid Transit tracks with Rapid Transit crews. (R. 84.) Notice of this suggestion was accordingly given to the various parties of record in the Rapid Transit court proceedings and to those in the North Shore court proceedings, which, in the North Shore case, included notice to the Brotherhoods who are Petitioners here. (R. 85.) Copies of a report to the court and of the suggestions in question accompanied such notice. The notice called for presentation of said report and suggestions on February

14, 1944. The Rapid Transit reorganization proceedings and the North Shore receivership proceedings were separate proceedings, but both were assigned to Judge Igoe, one of the District Court Judges. The sworn reports of the Receivers and Trustees and their suggestions were read in open court and discussion and argument followed. The Court adjourned without taking any formal action.

Later during the same day Judge Igoe called a meeting of the interested parties to be held in his chambers on the next day. Such a meeting did occur, as has previously been pointed out, at which the various interested parties, including the Brotherhoods, were present and were given an opportunity to and did state their position. (R. 86-88.) In that meeting and as a result of those discussions, Judge Igoe verbally instructed said Receivers and Trustees, in the presence and hearing of all, that the North Shore cars should be operated by Rapid Transit crews, starting the following Wednesday morning, February 18, 1942. (R. 89-90.) On the morning of that day (February 18, 1942) Judge Igoe reduced those verbal instructions to a formal order. (Trustee's Ex. 6, R. 196-197.)

These changes in the method and manner of moving North Shore trains over Rapid Transit tracks necessarily involved some changes in the operating contracts between the two companies, and two days later (February 20, 1942), the Court, after written notice to all parties (including the Brotherhoods), approved the form of the proposed supplementary or amendatory agreement and directed that same be submitted to the Illinois Commerce Commission for its approval. (Trustee's Ex. 8, R. 197-198.)

The Commission entered an order approving said amendment to the operating contracts between the two companies and, in so doing, stated therein that it was in the interests of public convenience and necessity and the only apparent

solution of the interruption to North Shore service. (Trustee's Ex. 9, R. 198-202.) By the entry of its said order, the Illinois Commerce Commission again exercised its police power, as it had many times in the past, with respect to the operating agreements between these two companies concerning use of Rapid Transit tracks by the North Shore.

Since the Illinois Supreme Court has specifically upheld the jurisdiction of said Commission over the original operating agreement covering said use of Rapid Transit tracks by the North Shore and previous amendments and supplements thereto, the only concern of the Court as to the jurisdiction of said Commission with respect to such operations arise from the question whether the *Railway Labor Act deprived said Commission of jurisdiction and authority to approve of the inter-corporate amendment* whereby the Rapid Transit has elected through its Trustees at the direction of the Court of their appointment to move North Shore cars over Rapid Transit tracks, with Rapid Transit crews. If the Commission was not deprived by the Railway Labor Act of its jurisdiction over the change effected with its approval, the procedures prescribed by the Illinois Public Utilities Act were controlling and not the procedures prescribed by the Railway Labor Act.

This Court has repeatedly said that the intention of Congress in any legislation by it enacted to exclude States from exercising their police power must be clearly stated. *Napier* v. *Atlanta Coast Line Railroad Company*, 272 U. S. 605, 611, 71 Law. ed. 432, 438; *Missouri Pacific R. R. Co.* v. *Norwood*, 283 U. S. 249, 256, 75 Law. ed. 1010, 1017. Nowhere in the Railway Labor Act can there be found any provision which on its face purports in so many words to repeal any state public utilities act.

What, we may then inquire, purpose or aim did Congress have in mind when it enacted the Railway Labor Act as amended?

In the case of *Virginian Railway Co.* v. *System Federation No. 40, Railway Employees Department of the American Federation of Labor, etc., et al.*, 300 U. S. 515, 553, 81 Law ed. 789, 802, this Court stated that the provisions of the Railway Labor Act are aimed at the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representatives of their employees, and by mediation and arbitration when such bargaining does not result in agreement, in order to obtain the objective of securing uninterrupted service of interstate railroads. It is to be noted that the collective bargaining therein provided for is "*between employers and* the authorized representatives of *their employees.*" (Italics supplied.) Reference to the Act itself discloses that the language of the Act is restricted to bargaining, negotiations, agreements, disputes *et cetera* between the carrier and its employees and to disputes between the carrier's employees as to who shall represent them. (Railway Labor Act, 45 U. S. C. Sections 151-163.)

Sec. 2, reads, in part, as follows:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements * * * and to settle all disputes * * * in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Sec. 2, Second, reads, in part, as follows:

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided * * * in conference, between representatives designated * * * by the carrier or carriers and the employees thereof interested in the dispute."

Sec. 2, Sixth, reads, in part, as follows:

> "In case of a dispute between a carrier or carriers

> and its or their employees * * * it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, * * * to specify a time and place at which such conference shall be held; * * *."

Sec. 2, Ninth, refers to disputes "among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act."

The controversy which brought about the interruption of movement of North Shore cars over Rapid Transit tracks was *between Rapid Transit employees* who were members of said Division 308 union and *North Shore employees* who were members of the Brotherhood organizations. (R. 71.) As has been previously stated, the Rapid Transit is not an interstate carrier and is not subject to the Railway Labor Act. The stoppage of North Shore trains was not due to a dispute between the North Shore Receivers and their employees because none existed. (R. 123.)

The representation dispute on the North Shore was not a dispute between the employer and its employees, but was between the North Shore employees themselves as to who was their proper bargaining agent in negotiations with the employer. That question was in the process of determination by the National Mediation Board under the procedures prescribed by the Railway Labor Act. No contention is made that that representation dispute was not subject to the Railway Labor Act. The Act specifically so provides. (Sec. 2, Ninth.)

Nothing can be found in the *Virginian Railway Company* case, 300 U. S. 515, which discloses any finding by the court that Congress had any intent to exclude a State from exercising its police power and to take away from a regulatory

body such as the Illinois Commerce Commission its jurisdiction over inter-corporate operating relationships and the right to approve or disapprove the terms and conditions upon which one carrier might propose to allow another carrier to use the former's property and facilities.

This Court has gone so far as to hold that the Railway Labor Act does not undertake governmental regulation of wages, hours or working conditions and that its enactment by Congress was not a pre-emption of the field of regulating working conditions themselves, but instead seeks to provide a means by which agreement may be reached with respect to them. *Terminal R. R. Ass'n of St. Louis* v. *Brotherhood of Railroad Trainmen, et al.*, 318 U. S. 1, 6, 87 Law ed. 571, 577.

Surely if it was not the intent of Congress in enacting the Railway Labor Act to undertake government regulation of wages, hours or working conditions between a carrier and its employees, it follows as truly as night follows the day that it was not the intent of Congress in enacting said Railway Labor Act to thereby undertake governmental regulation of inter-corporate operating relationships, a subject matter concerning which no mention whatever is made in the Act. Consequently, so far as the Railway Labor Act is concerned, there was no pre-emption on the part of Congress of the field of regulating such inter-corporate operating relationships.

As the Circuit Court of Appeals pointed out, the method and manner of operating North Shore cars on Rapid Transit tracks was the subject of inter-corporate agreements between the Rapid Transit (as a senior road) and the North Shore (as a junior road). The Illinois Commerce Commission necessarily must have taken the same position when it elected to assume jurisdiction under its police powers and approve those agreements, starting in 1919 with the original contracts and following in all amendments since

then. The Supreme Court of Illinois in the *North Shore* case against the City of Chicago, 331 Ill. 360, in upholding the validity of those contracts and the jurisdiction of the Commerce Commission, also must have necessarily taken the same view.

If that view is correct, it excludes any possibility of the method and manner of such inter-corporate operations being "working conditions" concerning which the North Shore as employer and its employees could make any agreement binding as against the Rapid Transit and binding as against the Illinois Commerce Commission. In the case of *Missouri Pacific R. R. Co.* v. *Norwood*, 42 F. 2d. 765, 773, which was affirmed by this Court in 283 U. S. 249, a three judge District Court, in considering the effect of the Railway Labor Act upon an Arkansas full crew act, stated that the words "working conditions" mean such conditions affecting the work of the employees as might be the subject of agreement between the carriers and the employees; that this could not include matters of statutory duty as such are withdrawn from the volition of either party.

Since the Railway Labor Act contains no provisions with respect to inter-corporate agreements or inter-corporate negotiations and since it has been held by this Court not to have undertaken governmental regulation of working conditions or pre-empted the field of regulating such working conditions themselves, but instead only provides a means by which agreement may be reached with respect thereto between an employer and *its* employees, it certainly cannot be said to have been the intention of Congress to exclude the Illinois Commerce Commission from exercising its police power in the matter of regulating inter-corporate contracts.

Petitioners, the Brotherhood organizations, however, contend that the manning of North Shore crews on the property of the Rapid Transit with Rapid Transit crews

constituted a change in working conditions and that the terms of the Railway Labor Act were violated in not giving thirty days' notice of such proposed change and in not following the procedures of the Railway Labor Act.

At the time North Shore cars were stopped from operating to and out of Chicago on February 1, 1942 and at the time the Rapid Transit took over the operation of those cars with Rapid Transit crews some eighteen days later, there was in existence an agreement between the North Shore Receivers and the aforementioned Division 900 on behalf of North Shore employees covering wages, rules and working conditions. (Trustees' Exhibit 1; R. 40, 103.) That contract did not designate any particular point on the Rapid Transit tracks in Chicago as a terminal or any point on the Rapid Transit from or to which North Shore employees, to the exclusion of any one else, would operate the North Shore cars. (R. 103; Trustees' Ex. 1.) The record shows that North Shore cars first operated as far south as Roosevelt Road, with a few possibly operating only to Wilson Avenue; that later North Shore cars were operated as far south as 63rd and Stony Island, and that, still later on, again only to Roosevelt Road. (R. 100.)

Can it be said that the Rapid Transit, as the senior road, although it had made reservations as to complete control and supervision of the operation of North Shore cars on Rapid Transit tracks, could not make, by agreement with the road using its property and with approval of the Illinois Commerce Commission, any change in such use of its property which would in any manner affect North Shore employees?

An affirmative answer to that question would be tantamount to depriving the Rapid Transit, to which the Railway Labor Act does not apply or does not purport to apply, of its use and control of its own property, and tantamount to saying that the Illinois Commerce Commission

had no jurisdiction over such inter-corporate contracts. Also, if the answer is in the affirmative, it would mean that now that the two companies are faced with the question of negotiating new contracts, neither the companies themselves nor the Illinois Commerce Commission would have any voice in saying how or upon what terms and conditions the North Shore would be permitted to use Rapid Transit tracks in the future.

No fault can be found with Petitioners' statement that Congress encouraged the making and maintaining of collective bargaining agreements concerning working conditions between carriers and their employees through authorized representatives through conferences between such representatives. It is quite apparent, however, that joint conferences between the employer (the North Shore Receivers) and any authorized representative of North Shore employees could go on and on and still not change the attitude of Rapid Transit employees who had refused and continued to refuse to perform the necessary work which would permit movement of North Shore cars on Rapid Transit tracks. The record shows that the Rapid Transit employees were adamant on that point. Even when long after the Brotherhood organizations had been duly designated as the bargaining representatives for North Shore employees and had made an appeal for assistance on this very problem to the Emergency Board appointed by the President of the United States, the Rapid Transit employees and their Union refused to appear before such Emergency Board; and the Board found that it was without jurisdiction over the Rapid Transit employees to compel appearance or participation by said Rapid Transit employees or to take any action affecting the manning of North Shore cars on Rapid Transit property by Rapid Transit employees. (Trustees' Exhibit 12, R. 217, 221-222.)

That Emergency Board itself was one of the agencies

created under the Railway Labor Act in conjunction with the war time stabilization laws and procedures. It was an agency which under the Railway Labor Act was to be resorted to after the efforts of the National Mediation Board themselves had failed to bring about a settlement contemplated by the Railway Labor Act. The Mediation Board and its mediators possessed no greater authority than the Emergency Board and their efforts would have been just as futile should the Rapid Transit employees, who were not subject to the Railway Labor Act and not subject to any compulsion thereunder, refuse to negotiate.

Interruption in service had already taken place and had continued for more than two weeks prior to the entry of the court orders of February 18, 1942. The situation was entirely beyond the control of either North Shore employees or the North Shore Receivers (the employer.) Rapid Transit employees could work or not work as they saw fit so far as North Shore employees and North Shore receivers had any control in the premises, and so far as the Railway Labor Act was concerned. All of which goes to show that the method and manner of operating North Shore cars on Rapid Transit property under the inter-corporate contracts between the North Shore and the Rapid Transit were not working conditions contemplated by the Railway Labor Act which could be the proper subject of agreement between the North Shore and its employees, to the exclusion of the interests of the Rapid Transit or its employees or to the exclusion of jurisdiction of the Illinois Commerce Commission.

Said Emergency Board found that the controversy which existed between Rapid Transit employees and North Shore employers represented by the Brotherhood organizations was something over which the Receivers had no control, in the following words:

"The carrier and its Receivers were in no way re-

sponsible for the conditions which led up to and made necessary the changing of crews at Howard." (Trustees' Exhibit 12, R. 217.)

As the aforementioned Presidential Emergency Board pointed out, the language of the Railway Labor Act could not be and never was intended to apply to a situation like the one here involved for the proper handling of which no adequate machinery is provided. Said Board said, in part, as follows (R. 221-222):

"* * * It now develops and seems to be conceded that it is in an inter-union controversy. Notwithstanding this, it is insisted that this Board must determine it. If so, it is clear that this determination must be based upon the ex parte presentation of the case made here without any opportunity for the Amalgamated to be brought before the Board. The Railway Labor Act seems to contain no provision for such a situation. There is no machinery provided by which this Board can compel the Amalgamated or the Rapid Transit employees represented by it or the said Rapid Transit Company itself (which is as much interested as the North Shore Railroad Company) to become a party, and it would appear that without the acquiescence of both parties to this case neither the Amalgamated nor the Rapid Transit Company could voluntarily intervene. At any rate, there has been no such acquiescence, and the Amalgamated, though having knowledge of these proceedings, has manifested no desire to intervene, nor has the Rapid Transit Co.

* * * * *

"We are not unmindful of the fact that the Railway Labor Act in its definition of the word 'carrier' includes therein 'any receiver, trustee or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier'; nor does this Board ignore the statement in Executive Order No. 9172 that an emergency board has conclusive and final jurisdiction of the dispute; but we

> do not believe that this language can or ever was intended to apply to a situation like this for the proper handling of which no adequate machinery is provided, nor that it can deprive this Court, which already has jurisdiction and which has acted after hearing all sides of the question, of the right to have its orders respected. The same remarks may be made with respect to the Illinois Commerce Commission. In the face of the order passed by these tribunals we feel powerless to make any recommendation contrary thereto."

The trouble with Petitioners' position is that they are endeavoring to use an Act which is applicable to one set of facts to prevent something not to their liking being done in a situation involving an entirely different set of facts and concerning which Congress has not seen fit to legislate. It goes to follow that the governmental machinery set up under the Railway Labor Act is not available to the situation at hand because the Railway Labor Act does not apply. As previously pointed out, no amount of mediation or conciliation between the North Shore and its employees could change or affect the controversy between North Shore employees and Rapid Transit employees unless the Rapid Transit employees were willing voluntarily to enter into some sort of mediation or conciliation and be bound thereby. Since there was no legislative machinery available, two weeks of stoppage of movement of North Shore cars into and out of Chicago over Rapid Transit tracks, with its inconvenience to the public and its devastating effects upon the North Shore revenues, was, it would seem, sufficient to justify the action of the court and the Illinois Commerce Commission, in directing and approving the changes in inter-corporate operating relationships which would and did again permit service to the public.

The District Court, of course, had no authority under

the Railway Labor Act to determine who the bargaining representatives of North Shore employees should be nor to pass in review upon any determination on that point made by the National Mediation Board. The court did not attempt to determine such jurisdictional controversy between the North Shore employees as to their bargaining representative and did not pass in review, and never has attempted so to pass, on the determination made by the National Mediation Board with respect thereto. The present bargaining agreement covering wages, rules and working conditions of North Shore employees was executed by the bargaining representatives certified by the National Mediation Board and it was those representatives who solicited the aid of the Presidential Emergency Board previously referred to.

There is, as previously stated, no contention on the part of Respondent, the North Shore Trustees who have succeeded the former equity Receivers in the operation of the North Shore properties, but that to the extent the Railway Labor Act is applicable to the North Shore and North Shore employees in their dealings with one another, it is equally applicable to the present Trustees and to the former Receivers and to the Court which appointed them.

Respondents, the North Shore Trustees, also recognize that as such Trustees they are not excused from compliance with State laws made applicable not only to the carrier itself but to trustees, receivers and other court appointees as well. Sec. 10, Ch. 111⅔ Ill. Rev. Sta. 1941; *Gillis* v. *California*, 293 U. S. 62, 66.

It is common practice for a court in charge of railroad receiverships and bankruptcy reorganizations to authorize the making of improvements, expenditures, contracts and the like and to direct its receivers or trustees to request Commerce Commission approval of such improve-

ments, expenditures, contracts and the like requiring such approval as a condition to their validity.

It therefore follows that the identical court orders of February 18, 1942 entered in the Rapid Transit bankruptcy reorganization proceeding and in the North Shore receivership proceeding and the identical orders of February 20, 1942 entered in said respective proceedings must, as far as the State law is concerned, be viewed as directory or permissive in nature and made subject to the jurisdiction of the Illinois Commerce Commission. In fact, the orders of February 20, 1942 approving the form of proposed amended contract between the Rapid Transit and the North Shore specifically provided for submission of the contract to the Commerce Commission for approval thereof.

It is therefore respectfully submitted that the Circuit Court of Appeals was correct in holding that the aforementioned changes brought about by formal agreement between the Rapid Transit and the North Shore pursuant to the direction of the court and as approved by the Illinois Commerce Commission were changes in inter-corporate operating relationships and were not changes in "working conditions" contemplated by the Railway Labor Act; and therefore the notice prescribed by the Railway Labor Act of an intended change in agreements affecting rates of pay, rules or working conditions could only apply to those matters affecting working conditions to which an employer and its employees could as between themselves agree, and as contemplated by the Act.

Consequently the court orders of February 18, 1942 (and also those of February 20, 1942) did not violate the Railway Labor Act and the Circuit Court of Appeals was justified in affirming the District Court order of June 30, 1944 refusing to vacate said order of February 18, 1942.

II.

The Decision of the Circuit Court of Appeals in This Case Is Not in Conflict With Decisions of This Court or With Other Decisions of the Various Circuit Courts of Appeal.

At no place in the opinion of the Circuit Court of Appeals rendered in this case is there evidenced any intent to disagree with the holdings of this Court or those of other Circuit Courts of Appeal in the cases cited by Petitioners as applied to the facts in the cases in which the opinions or holdings were rendered. It specifically pointed out that it believed the cases cited and this case which was before it were too different in fact for them to control this case. Not a single case cited by Petitioners involved a set of facts such as this one does. As this Court recently said in *Armour & Company* v. *Wantock, 89 Law Edition Advance Opinions, No. 3, Page 120, at 125, 65 Supreme Court Reporter Advance Sheet No. 3, Page 165, at 168:*

> "* * * It is timely again to remind counsel that words of our opinions are to be read in the light of the facts of the case under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court. General expressions transposed to other facts are often misleading. * * *"

In *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, the Express Company sought to change the wages of its employees in a manner contrary to the procedures of the Railway Labor Act. In the light of the facts as we find them here, it is quite apparent that a question of wages such as was involved in the *Railroad Telegraphers* case is not at all analogous to the factual situation here because in that case said wage question was a subject matter which rested solely between the

employer and its employees. There has been no contention as far as Respondents are concerned but that the question of any change in wages between them and their employees must be carried out under the procedures of the Railway Labor Act. In fact, the very Brotherhood organizations here involved have since their designation as the bargaining representatives of the North Shore employees resorted to and obtained wage increases under the machinery set up under the Railway Labor Act.

Equally inapplicable to the present situation is the case of *Railway Employees Co-op Ass'n* v. *Atlanta, B. & C. R. R. Co.*, (D. C. Ga. 1938), 22 Fed. Supp. 510, 512-514. In that case, while there was pending before the National Mediation Board a dispute as to who was the proper representative of the employees, the carrier saw fit to determine for itself who the representative should be and to make a new contract covering rates of pay, rules and working conditions with the representatives of the carrier's choice. That decision and the remarks of the court therein must be read in the light of the facts as applied to that case. Those facts are not at all analogous with the facts here before the Court.

The case of *Burke* v. *Morphy*, 109 Fed. (2d) 572, certiorari denied 310 U. S. 635, is equally inapplicable. That too involved a question of change in wages of its employees by a carrier subject to the Railway Labor Act. The holding of the Court that the mere fact that a Receiver was operating the property did not excuse compliance with the Act cannot be challenged. No contention is here made or has been made by Respondents that they as Trustees and officers of the Court, or their predecessors, the former Receivers, or the Court itself, are excused from complying with the terms of the Railway Labor Act in all instances where the provisions of the Act apply. They do contend, however, that the inter-corporate relationships between

the North Shore and the Rapid Transit as to the method and manner of operating North Shore trains on Rapid Transit property do not constitute working conditions contemplated by the Act. Petitioners would have the Court believe that working conditions mean any and all circumstances concerning work required by employees. In a broad sense that might be true, but as pointed out in *Missouri Pacific R. R. Co.* v. *Norwood*, 42 Fed. 2d 765, 773, and *Terminal Railroad Ass'n of St. Louis* v. *Brotherhood of Railroad Trainmen, et al.*, 318 U. S. 1, 6, there are limitations on any such all-inclusive interpretation. How absurd it would be to hold the undefined use of the words "working conditions" in the Railway Labor Act to mean "any and all circumstances concerning work required of employees" to the extent that the States would be excluded from exercising any police power which might in any way, shape or manner interfere with any and every circumstance touching upon work performed by a railroad employee, or making it impossible for a carrier not subject to the Railway Labor Act to do anything about the use of its property which might in any way, shape or manner interfere with any and every circumstance touching upon work performed by an employee of an interstate road using the property of the former!

The labor dispute involved in *Brotherhood of Railroad Trainmen* v. *T. P. & W. R. Co.*, 321 U. S. 50, 64-65, 88 Law ed. Adv. Ops. No. 6, 331, 339, was a dispute between the carrier and *its* employees of long standing over wages, rates of pay and working conditions. The conciliation and mediation efforts of the Railway Labor Act applicable to the carrier and *its* employees had failed to reach an agreement and the carrier had refused arbitration in the matter. As arbitration was not compulsory under the Act, the carrier after the expiration of thirty days sought an injunction which was denied on the ground that the Norris-

LaGuardia Act imposed a condition that every reasonable effort should be made to settle the dispute (which was covered by the Act) either by negotiation or with the aid of any *available* (italics supplied) governmental machinery or mediation or voluntary arbitration, at least by the methods specified, if they are available. As the carrier had refused arbitration made available under the Act as a voluntary course, the court refused an injunction. In the case at hand the dispute which brought about stoppage of North Shore cars and resulted in the inter-corporate operating changes involved in the change of crews was a dispute, as previously pointed out, between Rapid Transit employees not subject to the Railway Labor Act and certain North Shore employees. None of the machinery of the Railway Labor Act was available for the settlement of that kind of dispute, and furthermore no injunction was sought or granted in this case.

The District Court, which was operating the North Shore properties through Receivers and operating Rapid Transit properties in bankruptcy reorganizations through Trustees, did not more than direct its said agents to make such changes, with the approval of the Illinois Commerce Commission, in their inter-corporate operating relationships as were necessary to permit continued operation of the North Shore cars over Rapid Transit tracks in the interest of the public, and to operate those properties subject to the control and supervision reserved by the Rapid Transit when it originally permitted use of its tracks.

Nor is the case of *In re Central R. Co. of New Jersey, Order of Railway Conductors of America, et al.* v. *Pitney, et al.*, 145 F. (2d) 351 in point. There the establishment of switching limits of yards with concurrence of the two unions representing the carrier's own employees was a matter wholly within its ability to make since the entire matter related to its own property and involved only its

own employees. Here the North Shore was a tenant upon property of another carrier not subject to the Railway Labor Act and was using the latter's tracks under inter-corporate agreements which reserved control to the Rapid Transit. The North Shore was thus powerless to contract with its employees that they should man North Shore trains while on Rapid Transit property unless the Rapid Transit was willing to permit of such operation. In fact the North Shore labor contract with its employees did not contain any provision stating to what point on Rapid Transit tracks North Shore crews should operate. Over a period of years no objection was raised by anyone to the work actually being performed by North Shore employees. But when the Rapid Transit employees did refuse to throw switches and perform other duties necessary to let North Shore trains on or off Rapid Transit tracks, a situation arose over which no amount of bargaining between North Shore and its employees could be effective. In other words, the question of who should operate North Shore trains while on Rapid Transit tracks did not rest between North Shore and its employees.

Petitioners offered no proof before the Master in Chancery of coercion or attempted influence or interference by the North Shore upon the representation dispute. The Circuit Court of Appeals specifically found (R. 266) that there was no interference by the North Shore or by the District Court with the representation dispute on North Shore concerning the question as to who should represent North Shore employees. Yet in their brief in support of their petition for certiorari, both directly and by innuendo, they seek to leave with this Court the impression that the North Shore receivers entered into a conspiracy with the Rapid Transit employees to influence and coerce North Shore employees in their vote and that the District Court lent itself to such efforts. Petitioners made a simi-

lar charge before the Presidential Emergency Board set up under the Railway Labor Act but failed to even attempt to support the charge by evidence and retracted the charge when criticized by the Board for making it and then not offering evidence to support it. The facts disclosed by the records in this case do not support any such malicious and veiled charge or innuendo. The finding of the Circuit Court of Appeals on that factual situation would appear conclusive. Certainly it cannot be said to be in conflict with other decisions.

Petitioners also persist (page 22 of the brief) in the assertion that no controversy existed between the Rapid Transit employees and North Shore employees. Neither the Presidential Emergency Board nor the Special Master in Chancery before whom a full and complete hearing was had on the motion to vacate the order of February 18, 1942 nor the District Court nor the Circuit Court of Appeals believed that assertion. The record was all to the contrary. The latter court during the course of oral argument made some very pointed inquiries with respect to such assertion. Admittedly there was no *representation dispute* between the Rapid Transit union and the petitioning Brotherhoods as to representation of North Shore employees because the Rapid Transit union never did claim to represent North Shore employees. (R. 35, 60-62.) But the most casual reading of the record in this case will disclose that a very bitter controversy did exist between Rapid Transit employees and North Shore employees.

III.

Seniority and Wage Rates of North Shore Employees Were Not Changed by the Solution Arrived At.

There isn't any question but what the agreement negotiated by Division 900 when it represented North Shore employees, effective by its terms from June 1, 1941 to May 31, 1942, involved valuable rights affecting seniority and other valuable contract rights. The record in this case shows that North Shore employees on regular runs under that contract were paid on an hourly basis, regular employees being guaranteed a minimum of nine hours pay per day, but receiving pay for time actually worked over the nine hours. (Trustees' Ex. 1; also R. 175.) In many instances their runs did not require them to actually work the full nine hours. After the change was made whereby Rapid Transit employees manned the North Shore cars while on Rapid Transit tracks, the North Shore employees still continued to receive their guaranteed minimum day's pay, with pay for work actually performed beyond the minimum. (R. 104, 112-115.) Due to a re-arrangement of runs following such change, in some instances, actual work on trains plus layover time may have consumed a larger portion of the nine hours for which they were paid under their guarantee. There was nothing in the contract which said that the employer could not require the employee to work the full number of hours for which he was paid. (Trustees' Exhibit 1; also R. 112-115.) Under the contract extra trainmen were paid for the work which they actually performed when called out to work, with the proviso that if they were called out, they should be guaranteed a minimum of two hours' pay. The new contract negotiated by the Brotherhood organizations after their certification and long after the change of crews at

Howard Street had gone into effect reduced the nine hours to eight hours.

The record also shows that seniority under the Division 900 contract was based upon length of service, and that following the change whereby Rapid Transit crews manned North Shore cars while on Rapid Transit property, the North Shore employee with the greater length of service still continued to have priority in the picking of runs based on his length of service with the carrier; and the same is true under the existing Brotherhood agreement. (R. 111, 175; Trustees' Ex. 1 and 15.)

The Rapid Transit employees operating North Shore trains in Chicago continued to be Rapid Transit employees.

The record shows that rates of pay and seniority on the North Shore are not figured on mileage operated. In that respect the situation on the North Shore is unlike that on many steam railroads. The record shows that none the less the average weekly mileage required of North Shore employees in passenger service after the change of crews at Howard street became effective was no greater and in many instances was less that it was before, but that did not change their minimum guarantee of the specified number of hours of pay per day. (R. 112-115.)

IV.

From a Practical Standpoint, the Instant Case Is Moot Because of Expiration of North Shore-Rapid Transit Operating Contracts.

The operating contracts between the North Shore and the Rapid Transit have now by their terms expired and are being carried forward on a day to day basis. (R. 101-102.) Sooner or later entirely new contracts will have to be negotiated. Will it not then be up to the Rapid Transit or

its Trustees to say, subject to action by the Illinois Commerce Commission, upon what terms and conditions North Shore operations will be permitted, if permitted at all? Or are those questions already decided for all time, Rapid Transit, North Shore and Illinois Commerce Commission notwithstanding, merely because of the fact that employees of the North Shore were permitted in the past to operate North Shore cars while on Rapid Transit tracks?

Petitioners have somewhat emphasized the fact that the order of February 18th referred to the change in operating conditions brought about by that order as a temporary expedient. The use of the word "temporary", which appears in the recital part, could, of course, have no bearing upon the legal right and authority of the District Court to enter the order and direct the change in operations into the City of Chicago, but petitioners, the Brotherhood organizations, may have had in mind only an excuse for their failure to attack the order and the operation at an earlier date than they did.

It is quite obvious from an examination of the record in this case that the bitterness involved in the inter-union rivalry disclosed still exists. It requires no prescience in the face of common knowledge as to the bitterness which union jurisdictional controversies bring to the fore, to arrive at the conclusion that, if any attempt were now to be made to force the operation of North Shore trains into Chicago by employees of the North Shore belonging to the Brotherhoods, the picture would again be what it was when the order of February 18th was entered, and there would follow immediately a stoppage of the operation of all North Shore trains into Chicago, plus the inevitable shut-down and stoppage of all operations of the Rapid Transit Company.

When, some two years after the entry of its original

order, the District Court refused to vacate that order, the District Court certainly would not have acted as it did if there was any reasonable doubt in the judge's mind that the operations from Howard Street into Chicago as brought about by said order of February 18th must, in the interest of the properties involved, the war effort of the nation, and the public generally, be continued.

Conclusion.

It is therefore submitted that the order of the District Court entered February 18, 1942 was not controlled by and was not in violation of the Railway Labor Act, but related solely to changes in inter-corporate contracts and relationships between the North Shore and the Rapid Transit requiring, and which had, the approval of the Illinois Commerce Commission; that the Circuit Court of Appeals correctly affirmed the order of the District Court entered June 30, 1944 refusing to vacate said order of February 18, 1942; and that the decision of the Circuit Court of Appeals is not in conflict with those of any other Circuit Court of Appeals or of this Court. Accordingly the petition for certiorari should be denied.

Respectfully submitted,

RALPH R. BRADLEY,
FREDERICK E. STOUT,
Attorneys for Trustees of Chicago North Shore and Milwaukee Railroad Company, Respondents.

Address of Counsel:
RALPH R. BRADLEY,
FREDERICK E. STOUT,
209 So. La Salle Street,
Chicago 4, Illinois.